



Parents Television Council

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William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau
445 12th St., SW
Room 4-C330
Washington, DC 20554

RE: DA 06-1739

Dear Mr. Davenport:

This letter constitutes the public comments of the Parents Television Council, representing 1.1 million members, on the FCC's reconsideration of its rulings on violation of broadcast decency law. On September 7, 2006, the United States Court of Appeals for the Second Circuit granted the Commission's request for a remand of Section III.B of the March 15, 2006 *Omnibus Order* resolving numerous broadcast television indecency complaints.

We urge the Commission to render a ruling that is consistent with its original ruling on this matter. The Commission's original ruling accurately relied upon FCC precedent, as well as the rule of law.

As you well know, a number of previous enforcement actions from the FCC triggered requests by several licensees for additional guidance from the Commission, ostensibly to be able to make more informed programming decisions and to protect the community standards of decency they are required to uphold as broadcast licensees. This is precisely what the Commission's original ruling intended to provide: guidance. Rather than accept the further guidance offered in the *Omnibus Order*, and despite the fact that there were no forfeitures attached to the section of the order in question, the response from hundreds of licensees and all of the major broadcast networks has been to challenge the constitutionality of broadcast decency law and the Commission's authority to enforce it. But the standards are clear, they have been enforced by the Commission, and the constitutionality of these standards was affirmed by the Supreme Court in *FCC vs. Pacifica Foundation*.

It is clear that the broadcast networks would prefer to assert a "right" to air unlimited profanity at any time of day rather than submit to the established and reasonable principle

of protecting children between 6:00 AM and 10:00 PM – a standard which has already been upheld by the Supreme Court. That “right” asserted by broadcast licensees is indeed their right, but only after 10:00 PM. In light of its own precedent, it is the Commission’s responsibility to vigorously enforce the law as written and to carefully adjudicate the hundreds of thousands of indecency complaints it receives from the American people who own the broadcast airwaves.

In this case the broadcast networks have asserted that there are technology solutions available which sufficiently protect children from indecent programming. This is wholly untrue and we urge the Commission to identify and dismiss the inherent faults of this argument. First and foremost, the v-chip relies on a ratings system in order to function. A recent study by this organization found that television program ratings are arbitrary, capricious and inaccurate – inaccurate in fact up to 60%-80% of the time. Ratings were not just inconsistent across the various television networks, but individual networks actually rated similar content differently. One reason why the rating system is unreliable is that the networks, themselves, rate their programs. The advertisers, who are the networks’ true customers, often choose not to sponsor maturely-rated programs, so the networks face a financial conflict-of-interest to rate programs accurately. This conflict of interest runs counter to broadcast licensees’ requirement to serve the public interest.

Perhaps the most fatal flaw in the so-called technology solution is that the very programs cited in the *Omnibus Order* would not have been blocked by the v-chip. The ratings for the programs in question would not lead a viewer to believe that any indecent language would be present in those programs. Consequently, even if used properly by every family in America, the v-chip would not have prevented a single viewer from being subjected to the indecent language at issue. How then can this be remotely viewed as adequate to protect children from indecent programming? The simple fact is that it cannot.

But most importantly, and we must be very clear on this point, no amount of warning, rating, or blocking mechanism absolves broadcasters from adhering to their public interest requirements, among them the adherence to the broadcast decency law. Simply put, it is the broadcasters’ responsibility – those who hold licenses to use the public airwaves at no charge and at great profit to themselves – to ensure that they are in compliance with the law. It is not the viewer’s responsibility to protect him or herself from content broadcast over the public airwaves, nor should we expect children to do so for themselves. We would not tell freeway drivers they must protect themselves from drunk drivers by deploying seatbelts and airbags. We hold those accountable who perpetrate the wrongdoing.

In addition to countless American families, the Supreme Court and the Congress have all expressed their opinion on this matter and it is not a matter of debate. The law is clear. *Pacifica* dictates that, to be found indecent, material must be found in context to be patently offensive as measured by contemporary community standards for the broadcast medium. Parents and children do not expect to hear profane language during awards ceremonies or scripted dramatic programs before 10:00 PM, nor should they be subject to it during morning news programs as they were in the instances addressed in the section of

the *Omnibus Order* in question. It is abundantly clear that test of law was met and the Commission acted forthrightly under its obligation to enforce the law.

Therefore, we implore the Commission to uphold its previous order on this matter, and fulfill its obligation to uphold the law. The proper adjudication of the complaints of the hundreds of thousands of Americans which precipitated the *Omnibus Order* requires no less.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tim Winter". The signature is fluid and cursive, with the first name "Tim" and last name "Winter" clearly distinguishable.

Tim Winter
Executive Director